

EXHIBIT 63

CHARLES RIZZO, M.D.

May 29, 2012

1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
DOCKET NO. 11 Civ.8158 (KBF)

CIRO CHARLES HICKS,
Plaintiff,

VS

VANE LINE BUNKERING, INC., and the
TUG PATRIOT, In Rem,
Defendants.

DEPOSITION OF
CHARLES RIZZO, M.D.

TRANSCRIPT of the Deposition of the
witness, called for Oral Examination in the
above-captioned matter, said Deposition being
taken pursuant to Superior Court Rules of
Practice and Procedure by and before LISA ANNA
RINALDI, RPR, a Notary Public and Certified Court
Reporter of the State of New Jersey, at the
Offices of SHORE ORTHOPAEDIC GROUP, 35 Gilbert
Street South, Tinton Falls, New Jersey, on
Tuesday, May 29, 2012, commencing at
approximately 5:34 in the afternoon.



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1 A P P E A R A N C E S:

2
3 HOFMANN & SCHWEITZER
4 Attorneys for the Plaintiff
5 360 West 31st Street
6 Suite 1506
7 New York, New York 10001-2727
8 BY: PAUL T. HOFMANN, ESQUIRE

9 HILL, BETTS & NASH, LLP
10 Attorneys for the Defendants
11 One World Financial Center
12 200 Liberty Street
13 26th Floor
14 New York, New York 10281-1003
15 BY: JAMES EDWARD FORDE, ESQUIRE

16 A L S O P R E S E N T:
17 James Laughlin, Video Specialist
18 Esquire Deposition Solutions
19
20
21
22
23
24
25



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1 (Whereupon, reporter received and
2 marked 11 Documents as exhibits Rizzo-1,
3 Rizzo-2, Rizzo-3, Rizzo-4, Rizzo-5, Rizzo-6,
4 Rizzo-7, Rizzo-8, Rizzo-8A, Rizzo-9, Rizzo-9A
5 for identification.)
6

7 THE VIDEOGRAPHER: This is tape No. 1
8 of the videotaped deposition of Charles Rizzo,
9 M.D., in the matter of Hicks versus Van Line
10 Bunkering, Incorporated, et al, being heard
11 before the United States District Court, Southern
12 District of New York, Case No. 11 Civ.8158 (KBF.)

13 This deposition is being held at
14 Shore Orthopedic Group, 35 Gilbert Street South,
15 Tinton Falls, New Jersey on Tuesday, May 29,
16 2012, at approximately 5:33 p.m.

17 My name is James Laughlin and I am a
18 certified video specialist. The court reporter
19 is Lisa Rinaldi.

20 Counsel, will you please introduce
21 yourselves and affiliations and the witness will
22 be sworn.

23 MR. HOFMANN: Yes. Good afternoon.
24 My name is Paul Hofmann of Hofmann & Schweitzer,
25 and I am counsel for Mr. Charles Hicks.



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1 MR. FORDE: My name is James Forde
2 from the -- the law firm of Hill, Betts & Nash,
3 counsel for Van Line Bunkering, Inc.
4
5

6 C H A R L E S R I Z Z O, M.D.,
7 having first been duly sworn, testified as
8 follows:
9
10

11 DIRECT EXAMINATION BY MR. HOFMANN:

12 Q. Good afternoon, Doctor.

13 A. Hello.

14 Q. Would -- for the record, would you
15 state your name and office address?

16 A. Sure.

17 My name is Charles Rizzo, and this is
18 35 Gilbert Street South, Tinton Falls,
19 New Jersey.

20 Q. And, sir, are you a licensed
21 physician in the State of New Jersey?

22 A. Yes, I am.

23 Q. And for how long have you been so?

24 A. 17 years.

25 Q. Could you give us a little bit of



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1 your educational background starting with
2 college and working your way forward?

3 A. Sure.

4 I graduated from Wagner College,
5 Staten Island, New York with a degree in
6 bacteriology and public health. I went on to
7 medical school at University of Health
8 Science/Chicago Medical School, graduated with
9 my MD degree. Went into orthopedic residency at
10 New York University, completed 5-year program in
11 orthopedic surgery with a specialized year in
12 arthroscopic sports medicine surgery at
13 Jefferson University in Philadelphia.

14 Q. Philadelphia?

15 A. And then I joined Shore Orthopedic
16 Group, and I have been here since, since 1996.

17 Q. You indicated that you have had
18 training in the field of orthopedics; correct?

19 A. Correct.

20 Q. Could you explain to the jury what is
21 meant by the field of orthopedics?

22 A. Sure.

23 I mean, orthopedics is the branch of
24 medicine that deals with the musculoskeletal
25 system, so the joints, the bones, the ligaments,



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1 the spine. And we deal with all diseases of
2 that area, so diseases, injuries and that --
3 that's the field. My particular field is in
4 arthroscopic surgery, sports medicine.

5 Q. And is the -- the shoulder one of the
6 joints that is involved in orthopedic medicine?

7 A. Absolutely.

8 Q. And do you yourself do arthroscopic
9 surgery on shoulders?

10 A. Yes.

11 Q. And how frequently would -- do you do
12 arthroscopic surgery on shoulders?

13 A. I perform surgery on Mondays and
14 Wednesdays and normally 10 cases a week, which
15 probably 80 on percent are shoulders.

16 Q. There's a specialization called
17 "board certification in the field of
18 orthopedics"; is that correct?

19 A. Correct.

20 Q. Could you explain what that is?

21 A. Sure.

22 Board certification is when a person
23 completes their orthopedic residency, they can
24 sit for a written examination. After completing
25 and successfully passing the written



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1 examination, you can then go into a limited
2 practice. After certain year -- 2 years, you
3 can take a oral examination. Upon completion
4 and passing of the oral exam, you get your board
5 certification. So it's two parts, a written and
6 an oral. And then there is re-certification in
7 orthopedics. It's every 10 years.

8 Q. And are you board certified, sir?

9 A. I am board certified and I have been
10 re-certified. In addition to that, I have a
11 second board certification in sports medicine.

12 Q. Now, you indicated you are licensed
13 to practice in New Jersey.

14 Are you licensed to practice in any
15 other states?

16 A. New York, I have a New York license.

17 Q. Now, you've -- have you been
18 associated with providing medical treatment in
19 the orthopedic field to any professional sports'
20 teams?

21 A. Yes. When I was a fellow at Thomas
22 Jefferson Rothman Institute, we took care of
23 most of the professional athletes in
24 Philadelphia, the Flyers, the Eagles, the
25 Phillies. So I had big experience with



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1 professional athletes.

2 Q. Now with a New York jury, I'm not
3 sure if that's going to --

4 A. Yeah.

5 Q. -- get you much, but...

6 A. I'm still a Giant fan.

7 Q. Now, you have been practicing here at
8 Shore Orthopedics for how many years?

9 A. Since '96.

10 Q. And in your practice, has my client,
11 Ciro Charles Hicks, become a patient of yours?

12 A. Yes.

13 Q. And when for the first time was he
14 your patient?

15 A. For the first time, it was an
16 unrelated circumstance. He had fallen off a
17 roof. I don't know exactly the same -- the
18 date, but it was probably about ten or 12 years
19 ago and had very severe fractures of his lower
20 extremities, and I was -- took care of him at
21 that time.

22 Q. And did you perform surgery on him?

23 A. Yeah. We did perform emergency
24 surgery.

25 Q. And you were -- and after that --



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1 well, did those injuries involve either of his
2 shoulders?

3 A. No.

4 Q. And after you did the surgeries upon
5 him and gave him treatment, was he able to
6 return to work?

7 A. He did, yes.

8 Q. All right. And at some point, you
9 learned that he worked in the maritime field as
10 a tugboat captain --

11 A. Yes.

12 Q. -- is that right?

13 Has he consulted you with respect to
14 a right shoulder injury he sustained back in
15 April of 2009?

16 A. I did see him for that, yes.

17 Q. And when for the first time did you
18 see him?

19 A. I can refer back to my notes. The
20 first time that I saw him for the shoulder --
21 excuse me -- was August 13, 2010.

22 Q. Okay. In conjunction with him
23 visiting with you with respect to his right
24 shoulder in August of 2010, did you take a
25 history from him as to what -- what was the



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1 onset for the condition with his shoulder?

2 A. I did.

3 Q. And what did he describe to you?

4 A. He told me basically that he was
5 working on a tugboat, and he sustained an injury
6 lifting some heavy metal rings that they use for
7 towing the -- the boats. He had a dislocation
8 of his shoulder and had an injury at that time,
9 and he had -- was diagnosed with a rotator cuff
10 tear, had subsequent surgery for that and he was
11 still having problems with his shoulder and he
12 was seeking opinions, additional treatment.

13 Q. In conjunction with him becoming your
14 patient, did you have the opportunity to review
15 medical records of a prior orthopedic doctor who
16 treated him?

17 A. I did.

18 Q. Okay. Now I'm going to show you and
19 represent to you that this is a certified copy
20 of the medical records of Dr. Steven Lisser.

21 Do you know Dr. Lisser?

22 A. I do.

23 Q. Okay. And I'm also going to show
24 you -- and that is Exhibit 2, which you may
25 refer to.



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1 A. Uh-hum.

2 Q. I also have several other documents
3 that we'll have you review at times, but could
4 you -- you've had an opportunity to review
5 Dr. Lisser's medical file; is that true?

6 A. That's correct.

7 Q. All right. For the sake of brevity,
8 if you could just give a summary of what was
9 relevant from the medical records that you saw
10 from Dr. Lisser up until the point when
11 Mr. Hicks had a surgery, and then we will go
12 to -- we will go into detail of that.

13 A. Yes. I believe initially, Mr. Hicks
14 was seen by Dr. Murphy, who's Dr. Lisser's
15 partner.

16 Q. Right.

17 A. And he was referred to Dr. Lisser as
18 a shoulder specialist.

19 Q. Okay.

20 A. There was an MRI that was obtained of
21 the right shoulder. I believe there was a tear
22 of the rotator cuff in the right shoulder, and
23 Dr. Lisser recommended surgery to repair that
24 tear.

25 Q. Okay. What were -- in general, what



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1 were the complaints that Mr. Hicks was
2 exhibiting and -- and presenting with -- up
3 until that time of the surgery?

4 A. Shoulder pain, restricted motion,
5 weakness, classic type symptoms that patients
6 have with rotator cuff tears.

7 Q. Now, Dr. Lisser then had what's known
8 as an MRI or an MR arthrogram performed on
9 Mr. Hicks; is that correct?

10 A. That's correct.

11 Q. All right. I would like to show you
12 first what we've marked as Exhibit 4, and ask --
13 this is a -- a set of records from Atlantic
14 Diagnostics and contains the reports of the
15 arthrogram of the shoulder and the MR arthrogram
16 of the shoulder. You can take a look at that
17 please.

18 And, first, if you could explain to
19 us what is an arthrogram and then what is an
20 MR arthrogram and what they purport to show in
21 this case?

22 A. The MR -- standard MRI without the
23 arthrogram -- all the arthrogram is, is where
24 they inject a contrast or a dye in the shoulder
25 that gives us better detail for the MRI --



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1 Q. Okay.

2 A. -- so...

3 A standard MRI is a special test that
4 we can see soft tissue. X-rays shows bones.
5 The MRI can show tendons, ligaments and that
6 stuff. The arthrogram is done to add some
7 additional diagnostic capability to the MRI.

8 Q. Okay.

9 A. We routinely don't do it, but in this
10 case, it was done. It actually makes it a much
11 more detailed study.

12 Q. Okay. And what did this study reveal
13 as for -- by the radiologist, who reported on
14 it?

15 A. They usually will give you two
16 reports. One is the radiographic or the
17 arthrogram X-ray, and in his case it was
18 suspicious for a tear. And what you can see is
19 the dye leaks out; okay?

20 Then they did the MRI, and it shows
21 that he had a full-thickness tear of the rotator
22 cuff with fairly significant retraction or
23 separation of the tendon, and they say it was
24 two and a half to 3 centimeters. So that's a
25 fairly -- a fair -- a fair amount of widening.



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1 There was a partial thickness tear of the
2 infraspinatus, which is another muscle of the
3 rotator cuff.

4 Q. Okay. Anything else of significance?

5 A. The biceps tendon in the front of the
6 shoulder was also subluxed or was not positioned
7 properly.

8 Q. And is that indicative of anything?

9 A. It usually is indicative of having a
10 tear of the rotator cuff tendon in the front of
11 the shoulder, which is called a "subscapularis."
12 When that tendon ruptures, it allows the biceps
13 to kind of fall out of position.

14 Q. Now, Mr. Hicks had reported that he
15 had a -- had a -- shoulder was dislocated.

16 Is that a -- is that a medical term
17 or is that more of a lay -- layman's term?

18 A. No. A shoulder dislocation is a --
19 is a medical term, and it means that the ball
20 and socket has come apart.

21 Q. All right. Is -- is that as a
22 mechanism of injury? Is that -- does that
23 correlate with the findings that -- that the
24 MR arthrogram and the arthrogram showed?

25 A. Yes. In patients who are, say, 50 or



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1 older, our main concern when they have a
2 dislocation of their shoulder is that there is a
3 concurrent tear of the rotator cuff. So most
4 patients will get an MRI to determine that.

5 Q. Okay. You've used a lot of medical
6 terminology about the -- the structures of the
7 shoulder.

8 Do you have a model that could help
9 explain this to the jury?

10 A. Sure.

11 Q. All right. Could you do so --

12 A. Sure.

13 Q. -- what we are talking about here?

14 A. This is the -- an isolated shoulder,
15 and this has all the muscles attached, so it's
16 good to reference for the rotator cuff muscles.
17 And what we see is the shoulder is a ball and a
18 socket and then all of the associated muscles
19 around it. And here we can see --

20 Q. Are we looking at the front of the
21 shoulder or the back right now?

22 A. This is the front of the shoulder.
23 So here's the collarbone. This would be the
24 right shoulder, collarbone in the front, arm
25 here. The front portion of the rotator cuff is



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1 this muscle here. It's -- it's a muscle and
2 then becomes a tendon, which is like leather,
3 really dense attachment to the bone. That's the
4 subscapularis. That was torn on the MRI.

5 And then if we look at the top
6 muscles, we have the supraspinatus muscle across
7 the top and infraspinatus across the back and
8 there's a small muscle associated with that,
9 which make up the four muscles of the rotator
10 cuff. In Mr. Hicks, he had a tear of the
11 supraspinatus, some tearing of the infraspinatus
12 and a tear of the subscapularis. So, really,
13 three of the four tendons were damaged.

14 Q. Okay. And there was injury to the
15 biceps tendon as well?

16 A. The biceps tendon is this tendon
17 here, which goes up into the joint and is
18 underneath the rotator cuff. So when the
19 rotator cuff tears, this becomes also unstable.

20 Q. All right. Now, have you also
21 reviewed the films that were taken at
22 Atlantic Imaging?

23 A. Yes.

24 Q. All right. Do you have an example
25 that you could show the jury might -- that might



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1 show some of this damage that you --

2 A. Yes.

3 Q. -- have been talking about?

4 A. This is the arthrogram film that
5 we're talking about, and you can see it's kind
6 of a picture just in the orientation of the
7 model. You have the -- the ball and the socket
8 and then the -- the tendons are these muscles,
9 tendons that come and attach in this area. And
10 you can see as we kind of work our way down, the
11 white material is the contrast from the
12 arthrogram.

13 Q. I see.

14 A. And we can see that the tendon is --
15 the end of that tendon is sitting right about
16 here. Normally, that tendon attaches to the
17 bone out here; okay? So there's a retraction of
18 the tendon, and they refer to it as two and a
19 half to 3 centimeters. So the end of this
20 tendon should be attached to this area.

21 Q. So, we shouldn't be seeing white in
22 that area?

23 A. You should not be seeing white.
24 Exactly.

25 Q. And how about any of the other --



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1 A. And it --

2 Q. -- structures that you -- you're
3 talking about?

4 A. It shows the contrast here leaking
5 out the front of the shoulder, which is where
6 the subscapularis is in the front.

7 Q. I see.

8 A. There are some other views which show
9 it, but this really shows it very nicely to see
10 the -- the full extent of the tear.

11 Q. Now, did -- Doctor, in your opinion,
12 did Dr. Lisser appropriately address the tears
13 that were found?

14 A. Absolutely.

15 Q. What did he do?

16 A. His surgery, he did arthroscopic
17 surgery where the procedure was done with a
18 scope rather than a big incision, and that's
19 state of the art at this point --

20 Q. Uh-hum.

21 A. -- and the tendon was reattached.

22 The biceps, which was torn, was also
23 addressed and the shoulder, basically, cleaned
24 out all the partial tears and inflammation.

25 Q. Now I'm going to show you what we've



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1 marked as -- first of all, that -- that film
2 that we -- you reviewed is marked as Exhibit 8A
3 for the record, is it not, Doctor, up there
4 in --

5 A. Correct.

6 Q. -- the corner?

7 Okay. Now let me show you what we've
8 marked as Exhibit 3 to your deposition, and this
9 is a certified copy of the surgery records from
10 Riverview Medical Center.

11 And if you could -- I'm -- I opened
12 it up for your benefit to the operative report.

13 Could you explain what Dr. Lisser did
14 in the surgery, please?

15 A. Yes. The procedure was arthroscopy
16 of the right shoulder. That's basically a
17 diagnostic where you're looking into the
18 shoulder with the scope to see the extent of the
19 injuries.

20 There was an extensive glenohumeral
21 debridement, cleaning out debris and
22 inflammation; a biceps tenodesis in which the
23 biceps was anchored in place with suture
24 anchors; arthroscopic rotator cuff repair and
25 subacromial decompression.



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1 Q. Yes.

2 A. So those are all appropriate
3 procedures for this problem.

4 Q. In the -- the package, are there some
5 of the photographs from the arthroscopy itself?

6 A. Yes.

7 Q. All right. Maybe you could show them
8 to the -- to the jury and point out anything
9 significant there?

10 A. These are the arthroscopic
11 photographs. Actually, the -- the camera that's
12 put in the shoulder can actually take these
13 pictures, and these are the still shots from
14 that. And you can see this -- this is tissue
15 that's torn from the biceps tendon. This is
16 more torn biceps tendon. These are pictures of
17 the rotator cuff tear. This is rotator cuff
18 tissue, which should be attached to that bony
19 attachment. And then he has some very nice
20 post-repair pictures here, which show, I think,
21 a very satisfactory rotator cuff repair where
22 the tendon is put back to the bone. And we can
23 see these are blue and green sutures, which are
24 the -- the stitches that anchor it in place.

25 Q. Uh-hum.



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1 A. So at the end of the procedure, I
2 think Dr. Lisser did a great repair in repairing
3 that rotator cuff.

4 Q. Okay. Thank you. Let's put those
5 down, put the exhibit back together and move on.

6 Now, we left off when we were talking
7 about Dr. Lisser, of course, there at the
8 surgery, but beforehand, we've talked about his
9 office notes presurgery.

10 Did you also review in Exhibit 2
11 and -- or a copy thereof, the post-surgical
12 recuperation and how Mr. Hicks proceeded with
13 his recovery after the surgery?

14 A. Yes, I did.

15 Q. And could you summarize to the jury
16 what the -- the doc -- Dr. Lisser's records
17 reveal about how he recuperated?

18 A. Mr. Hicks had all the appropriate
19 complaints of any patient after surgery. They
20 have pain. They have stiffness, but there was a
21 progression of that. It just seemed that he
22 never really did get better. He constantly
23 complained of persistent pain and weakness in
24 his shoulder even with the physical therapy.

25 Q. And for how long did that -- did



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1 those complaints to Dr. Lisser proceed?

2 A. Several months.

3 Q. And did there come a time that
4 Dr. Lisser, from your review, started
5 considering that he would have to maybe look
6 back into the shoulder for further treatment?

7 A. I believe he did recommend an -- an
8 MRI scan.

9 Q. Okay.

10 A. And that's -- that's standard. When
11 the patient is not progressing as -- according
12 to a postop plan, we have to make sure that
13 there's not been a recurrent tear here.

14 Q. Now, was Dr. Lisser having Mr. Hicks
15 undergo physical therapy?

16 A. He did.

17 Q. And is physical therapy a -- an
18 appropriate treatment for a person with shoulder
19 surgery?

20 A. Absolutely. It's very important part
21 of the recovery.

22 Q. Okay. Now I'm going to refer you
23 to -- we will jump ahead from the surgery, which
24 it was -- what was the date of the surgery,
25 July 1, 2009; is that correct?



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1 A. Sounds correct.

2 Q. All right. I'd like you to take a
3 look at the office notes of Dr. Lisser's office
4 from December 9, 2009, and then I'd like you to
5 just review them and summarize what -- what the
6 doctor is reporting at this point, 5 months,
7 1 week after the surgery.

8 A. His range of motion was still limited
9 with, basically, only could -- he had his arm up
10 to 120 degrees. Normal is about 180 degrees, so
11 that was limited.

12 Q. In which -- in which direction,
13 straight --

14 A. Forward flexion, bringing the arm
15 straight up over your head.

16 Q. Okay.

17 A. Okay. That's one of the major
18 function of the rotator cuff.

19 It says here, "Assessment, slow
20 progress and delay of physical therapy.
21 Anticipate continuing physical therapy with a
22 minimum of eight more weeks of additional
23 straightening." Work status was modified duty.
24 MMI, which means maximum medical improvement,
25 was anticipated at 8 weeks. No overhead use of



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1 his right arm with maximum lifting of 10 pounds
2 was the restrictions.

3 Q. Okay. Were those reasonable
4 restrictions at that time --

5 A. Yes.

6 Q. -- in your opinion?

7 A. Yes, absolutely.

8 Q. All right. I now would like to refer
9 you to the next office note for Mr. Hicks
10 from -- from the doctor, and this is dated
11 January 15, 2010, and what do those notes reveal
12 as to the status for Mr. Hicks?

13 A. His history is gradual improvement.
14 Physical examination showed improvement to
15 150 degrees of motions from that last visit.
16 Recommend continued physical therapy and assess
17 in 6 weeks.

18 Q. So, at -- at that point, did he also
19 have Mr. Hicks in a modified work status?

20 A. Yes.

21 Q. All right. Now I'd like you to again
22 take a look at the next office note from
23 Dr. Lisser, and that's dated March 8, 2010, and
24 what does that show?

25 A. Reports residual pain in right



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1 shoulder. It seems to be some delay in physical
2 therapy. Physical examination revealed a
3 painful range of motion in -- in adduction.

4 Q. Could you explain what ab -- is that
5 a-b-d?

6 A. A-d-duction. It's --

7 Q. A-d-duction.

8 A. And which basically is a motion
9 across the midline. Most of the time with
10 patients, it's a-b-duction out to the side. So
11 I'm not sure if that's correct or not.

12 It says, "Residual right shoulder
13 pain. Recommend further therapy since has not
14 completed a full therapy protocol," and
15 continued modified duty.

16 Q. If you could go to the next office
17 note for the doctor, there's -- there are
18 physical therapy notes in between; is that
19 correct?

20 A. Correct.

21 Q. All right. But if you'd go to the
22 next and tell us what date it is?

23 A. This is date of service 4/26/2010.

24 Q. Okay. Could you tell us what that
25 shows?



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1 A. It says, "Reports persistent pain and
2 weakness in right shoulder, which has not
3 improved over the past several months, limiting
4 ability to use the arm in overhead position and
5 heavy lifting in any position." And then,
6 physical examination shows, again, range of
7 motion at 150 degrees; anterior tenderness, pain
8 in the front of the shoulder with pressing
9 there. And it says, "Assessment plan, his
10 persistent shoulder pain and functional
11 impairment, which have not shown further
12 improvement over the past several months and not
13 improved as anticipated following surgery.
14 Recommend an MRI scan to assess healing. Return
15 to the office after MRI scan," and, again,
16 modified duty, work -- sedentary work.

17 Q. Assuming these same complaints had
18 been presented to you, would you -- would you
19 agree with the treatment plan of getting an MRI
20 for a patient who was now about 8 months
21 post-surgery?

22 A. Absolutely, standard of care.

23 Q. Okay. In fact, from your review of
24 the records from the time of surgery until that
25 note of April 26, 2010, had Mr. Hicks shown



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1 significant improvement in his condition?

2 MR. FORDE: Objection.

3 THE WITNESS: Answer?

4 BY MR. HOFMANN:

5 Q. Yeah, please.

6 A. According, he had improvement,
7 obviously, with range of motion, but he had
8 continued complaints of pain and weakness, but
9 he did improve as far as range of motion.

10 Q. Had he reached a -- a satisfactory
11 result by April 26, 2010?

12 A. No. No. I'm sure that's why
13 Dr. Lisser was concerned and wanted a new MRI.

14 Q. The next person to address and treat
15 Mr. Hicks's right shoulder, to your knowledge,
16 was yourself; is that right?

17 A. To my knowledge, yes.

18 Q. All right. And let me show you what
19 I've marked as Exhibit 6, which is a combination
20 of -- well, tell us what they are.

21 A. This was a evaluation medical report
22 in which I was able to take a detailed history,
23 review the studies and do a physical examination
24 and to give a second opinion as to what was
25 necessary to evaluate Mr. Hicks.



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1 Q. Does your -- do -- does your office
2 file -- if I may take a quick look, does your
3 office file have these same reports or copies of
4 these same reports?

5 A. There's three individual reports.
6 There's the medical report. There's an addendum
7 to that report reviewing an MRI and then there
8 was another office visit that I saw Mr. Hicks.

9 Q. And the initial note or initial
10 report is August 13, 2010; correct?

11 A. Correct.

12 Q. And the subsequent report is
13 November 2, 2010?

14 A. Correct.

15 Q. And then there's an office note of
16 February 22, 2011; correct?

17 A. Correct.

18 Q. Do you have any other typewritten
19 records of the August 13th or the November 2,
20 2010, visits in your file?

21 A. Just these.

22 Q. Okay.

23 A. These are the actual records from the
24 file.

25 Q. So these are -- so what has been



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1 marked as Rizzo Exhibit 6 is -- is actually a --
2 copies of business records --

3 A. Correct.

4 Q. -- that you maintained in your file;
5 correct?

6 A. Correct. Absolutely.

7 Q. Could you tell the -- the jury now
8 what your exam consisted of on August 13, 2010,
9 and what were your physical findings?

10 A. My examination is -- was geared
11 mostly towards the right shoulder. He had
12 arthroscopic portholes, which were healed. He
13 had very limited range of motion of his shoulder
14 with full elevation to only 110 degrees when I
15 examined him.

16 There was an impingement sign, which
17 is pain that's developed from rotator cuff
18 irritation, inflammation or a tear. He had
19 tenderness to palpation where it hurt over the
20 AC joint, which is the acromioclavicular joint,
21 which is the joint between the collarbone and
22 the shoulder blade. It's very tender.

23 He had weakness when we tested his
24 rotator cuff in abduction and external rotation
25 strength, and he had a positive supraspinatus



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1 test, which is a test that we're testing the
2 supraspinatus muscle strength, which was the
3 tendon that was a problem initially.

4 Q. Okay.

5 A. And all the nerves were functioning
6 in the shoulder. There was no nerve deficits or
7 vascular problems.

8 Q. In developing -- well, in reviewing
9 your -- your findings on exam and the -- and the
10 materials you reviewed, did you then reach a
11 clinical diagnosis of what was ailing Mr. Hicks
12 at that time in August of 2010?

13 A. I did, and my concern was that he had
14 a recurrent tear of his rotator cuff.

15 Q. Was there anything that you at that
16 point wished from a diagnostic standpoint to be
17 performed in order to either confirm or disprove
18 your assessment at that time?

19 A. Yes.

20 Q. And what was that?

21 A. A repeat MRI.

22 Q. In fact, at some point Mr. Hicks did
23 get a repeat MRI; is that correct?

24 A. He did. Yes, he did.

25 Q. If I may, let me show you what we've



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1 marked first as Rizzo Exhibit 7, and can you
2 tell us what that document is?

3 A. This is a repeat MRI, non-contrast,
4 without the dye, of the right shoulder. It was
5 performed -- I believe the date --

6 Q. October something?

7 A. -- October 22, 2010.

8 Q. And can you explain to the jury what
9 the report reveals, and then I'll ask you if
10 you've reviewed the films?

11 A. On the report, reveals a recurrent,
12 full thickness tear of the supraspinatus with a
13 one and a half centimeter gap. There was still
14 a partial tear of the subscapularis tendon. The
15 biceps was also mentioned, but I believe that
16 that was post-surgical findings of the position
17 had changed from that tenodesis procedure.

18 Q. Okay.

19 A. And then he had some arthritis of the
20 AC joint, or acromioclavicular joint.

21 Q. Did you review MRI films with respect
22 to the MRI performed on October 22, 2010?

23 A. I did.

24 Q. Okay. And are those MRI films in the
25 exhibit -- in the folder, Exhibit 9?



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1 A. Correct.

2 Q. And is there one that you may be able
3 to show us that would maybe explain what the
4 findings were?

5 A. Sure.

6 Q. And you're referring to Exhibit 9A;
7 is that correct?

8 A. Correct.

9 Q. All right. Here, I will take this
10 one. Okay.

11 A. This is a very similar study, which
12 we call "acromial view," and it shows, again,
13 the ball and the socket. It shows the rotator
14 cuff is back in essentially the same position it
15 was on the previous study with the end of the
16 tendon here. This shows the post-surgical
17 position of the suture anchors, which Dr. Lisser
18 used to hold that rotator cuff in place. We can
19 see one here and here, but it shows a complete,
20 recurrent tear in the rotator cuff.

21 Q. And as you explained, there are
22 several muscles that constitute the rotator
23 cuff.

24 If you could, again, show us with the
25 model what the -- this MRI reveals the tears



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1 are?

2 A. Sure.

3 Again, it's the same -- same
4 position, same orientation. It shows a tear of
5 the supraspinatus tendon, which is this tendon,
6 which would normally be attached way on the
7 lateral or the far side of the -- of the bone.
8 It's sitting retracted on the inside almost in
9 the joint. So this tendon here belongs attached
10 way out there, and that's this, the larger --
11 largest portion of the rotator cuff is re-torn.

12 Q. Okay. And now, what about the
13 subscapularis?

14 A. The subscapularis, again, had a
15 partial tear. You can't see that on this film
16 without the contrast, but the subscapularis is
17 the tendon in the front of the shoulder, and
18 there was a -- still a partial defect or a
19 partial tear of that as well.

20 Q. Okay. In the second of the three
21 reports that are part of Exhibit 6, did you give
22 a review of your viewing of the MRI?

23 A. I did.

24 Q. When is the next time that you saw
25 Mr. Hicks?



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1 A. I saw him as -- as an office visit
2 February 22, 2011.

3 Q. Could you tell the jury what
4 Mr. Hicks's complaints were and your findings on
5 exam?

6 A. Basically, the same complaints. He
7 still had pain in his shoulder. He noticed that
8 it was severe pain at times. He had no
9 improvement with the surgery or with the
10 physical therapy, and he was coming to me
11 requesting what could be done to help him.

12 Q. What did you recommend be done to
13 help him?

14 A. I recommended that we try to
15 re-repair it with a second surgery.

16 Q. Okay. Is there a reason that you are
17 aware of that Mr. Hicks has not had the surgery?

18 A. I believe --

19 MR. FORDE: Objection.

20 THE WITNESS: I believe it was, you
21 know, due to financial issues.

22 BY MR. HOFMANN:

23 Q. He was not able to afford it?

24 MR. FORDE: Objection.

25 BY MR. HOFMANN:



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1 Q. Is that right?

2 A. That was my understanding.

3 Q. Did you -- did you attempt to help
4 him obtain the surgery through charitable means
5 or something else?

6 MR. FORDE: Objection.

7 THE WITNESS: I think we did. We
8 tried to help him with Charity Care and that
9 sort of thing.

10 BY MR. HOFMANN:

11 Q. And was it -- were you able to obtain
12 it for him?

13 MR. FORDE: Objection.

14 THE WITNESS: No.

15 BY MR. HOFMANN:

16 Q. Okay. Based on all the information
17 you have reviewed, the studies, your findings on
18 examination, your review of Dr. Lisser's records
19 and notes, do you have an opinion within a
20 reasonable degree of medical certainty as to
21 what injury Mr. Hicks initially suffered in the
22 incident on April 21, 2010?

23 MR. FORDE: Objection.

24 BY MR. HOFMANN:

25 Q. 2009? Excuse me.



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1 MR. FORDE: Same objection.

2 THE WITNESS: I mean, it's likely
3 that he suffered a dislocation or subluxation,
4 some shifting and tearing of the shoulder, which
5 resulted in a rotator cuff tear. He had what
6 apparently was a very good surgery. The tear
7 re-ruptured, did not heal, and he's left with a
8 recurrent problem.

9 BY MR. HOFMANN:

10 Q. Is it surprising, though, that the --
11 that there was a -- to your knowledge and your
12 experience, that there would be a re-rupture in
13 the shoulder such as what Mr. Hicks had?

14 MR. FORDE: Objection.

15 THE WITNESS: It's not. It's not
16 unheard of that you can have a recurrent tear,
17 and I think most of the data studies are showing
18 that these tears occur early on in rehab. But
19 it's not -- it happens in my own patients, and I
20 think what we -- we are, you know, diligent in
21 finding out with an MRI and giving that patient
22 a possible recurrent -- re-operation.

23 BY MR. HOFMANN:

24 Q. In -- in your opinion -- or do you
25 have an opinion as to what -- what is the cause



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1 of the recurrent tear that Mr. Hicks has
2 exhibited since his surgery in July 2009?

3 MR. FORDE: Objection.

4 THE WITNESS: I don't know
5 specifically in Mr. Hicks, but in -- in --
6 in most patients, those tears occur usually in
7 physical therapy early on after surgery.

8 BY MR. HOFMANN:

9 Q. And assuming Mr. Hicks will testify
10 or has testified by the time this is viewed,
11 that he had no additional traumatic event post
12 July 1, 2009, until the time you seen him or
13 even to the present --

14 A. Uh-hum.

15 Q. -- would that shape your opinion as
16 to what the likely cause for his recurrent tear
17 is?

18 A. No.

19 Q. Well, would it -- would it -- would
20 it add enough information for you to -- to be
21 able to discount?

22 A. In -- in my experience, these tears
23 can recur -- especially large tears, can recur
24 with aggressive physical therapy where they try
25 to obtain early range of motion and the patient



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1 has pain in physical therapy. And it's
2 progressive micro-tearing over the course of the
3 physical therapy that re-tears it. There's not
4 one event.

5 Q. Okay. And is it in your -- your
6 opinion here that that is the most likely cause
7 for the recurrence?

8 MR. FORDE: Objection.

9 THE WITNESS: Without his
10 additional -- no history of any additional
11 trauma, yes.

12 BY MR. HOFMANN:

13 Q. Okay. If he were to have the surgery
14 that you've recommended, what surgery would you
15 propose be performed?

16 A. I would recommend a diagnostic
17 arthroscopy. We would look in there and see the
18 consistency of the tissue, the configuration of
19 the tear, and then reattempt an arthroscopic
20 repair.

21 Q. Okay. Similar to what Dr. Lisser did
22 the first time?

23 A. Right.

24 Q. All right. If the surgery was
25 performed, what would be the recuperation period



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1 till he reached maximum medical improvement?

2 A. In a revision setting, probably
3 6 months.

4 Q. And what sort of treatment would be
5 necessary in that period?

6 A. Physical therapy.

7 Q. If you were to perform the surgery,
8 do you know what -- what your standard charges
9 are for doing a arthroscopic surgery repair?

10 A. My office charges?

11 Q. Yes.

12 A. No. There's various codes, but it's
13 in -- it's in the range of thousands of dollars.

14 Q. Could you give us an estimate?

15 A. \$5,000.

16 Q. And hospitalization costs, can you
17 estimate what that would be?

18 A. Probably 10,000 plus.

19 Q. And physical therapy, what sort of
20 physical therapy would you recommend
21 post-surgery assuming he had it?

22 A. Well, we would go very slow with him
23 post-surgical.

24 Q. Uh-hum.

25 A. I mean, so a lot of therapy, he might



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1 even be able to do just simple range of motion
2 for the first 6 weeks before he is into formal
3 therapy.

4 Q. Uh-hum.

5 A. But it would probably take a minimum
6 of four to 6 months of physical therapy
7 afterwards.

8 Q. And how -- how frequently would you
9 recommend --

10 A. Two to three times a week.

11 Q. From -- in your opinion, Doctor, has
12 Mr. Hicks reached maximum medical improvement
13 from the initial injury he had back in April of
14 2009?

15 MR. FORDE: Objection.

16 THE WITNESS: No.

17 BY MR. HOFMANN:

18 Q. And would it take that surgery and
19 the aftercare that you've recommended for him to
20 reach that?

21 A. Correct.

22 MR. FORDE: Objection.

23 BY MR. HOFMANN:

24 Q. Have you had the benefit of reviewing
25 a surveillance videotape of Mr. Hicks --



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1 A. I did.

2 Q. -- that was taken back in -- in or
3 about April of 2010?

4 A. I did.

5 Q. In general, what did you -- what were
6 the activities you saw in that surveillance that
7 Mr. Hicks was doing?

8 A. He was basically walking a lot
9 from -- you know, to his truck to his car, but
10 there was one point that he was -- I guess his
11 grandson or a small child was playing with a
12 shovel and he was helping plant a shrub.

13 Q. Okay. And in that -- in that
14 videotape, did you observe Mr. Hicks picking up
15 any weight of any significance?

16 A. Yes. He picked up the shrub. It was
17 a small evergreen-type shrub --

18 Q. Uh-hum.

19 A. -- and he picked it up with his left
20 hand and then put it in the hole, and he was
21 using the shovel with both hands --

22 Q. Uh-hum.

23 A. -- the right hand on the back of the
24 shovel.

25 Q. Is there -- in -- in your



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1 professional opinion, is there anything
2 inconsistent in Mr. Hicks doing that physical
3 activity with the complaints that he has
4 presented with -- and that support your
5 diagnosis of the recurrent tear?

6 A. I mean, most patients have some
7 restrictions, mostly with overhead activity.
8 But down with the arm at their side, they can
9 actually perform some lifting up to 10 pounds or
10 so, but it's really when they start getting the
11 arm up over their head they have difficulty.

12 Q. Did you see anything in that
13 videotape that showed Mr. Hicks doing overhead
14 activities?

15 A. No.

16 Q. Was there anything in that videotape
17 that if you were to have seen it while you were
18 treating him, that you would say that this
19 patient is not telling the truth about his
20 complaints?

21 A. Well, it's possible. Anything is
22 possible, but that was months after his surgery.

23 Q. It was in April of 2010. It was --

24 A. So about a year after his surgery.

25 Q. Right.



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1 A. And no. I think at that point I
2 would give him unrestricted activity. I would
3 tell my patient, you know, at a year, you should
4 be expected to be able to do pretty much lifting
5 and reaching and that sort of thing.

6 Q. In what plains?

7 A. Excuse me?

8 Q. In what -- in which plains?

9 A. In all plains, if they've -- if they
10 had a successful rotator --

11 Q. Right.

12 A. -- cuff repair.

13 Q. Assuming, though, in April of 2010
14 that Mr. Hicks had a recurrent tear.

15 Would there be restrictions that you
16 would --

17 A. I would --

18 Q. -- that you would assign to him?

19 A. Yes. I would tell him no overhead
20 lifting, no climbing, things over his head where
21 he would have weakness.

22 Q. And getting back to the videotape of
23 the surveillance, is there anything there that
24 would -- that you would have said that he could
25 not do that he was performing in that videotape?



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1 MR. FORDE: Objection.

2 THE WITNESS: No. From my viewing,
3 he did the lifting with the left arm, which was
4 a normal arm, and he was just using the right
5 arm to guide the shovel and do some light
6 lifting with some topsoil.

7 MR. HOFMANN: Can we go off the
8 record for 1 minute, please?

9 THE VIDEOGRAPHER: Off the record.
10 The time is 6:17.

11 (Break in the video proceedings.)

12 MR. HOFMANN: Back on the record.
13 The time is 6:17.

14 BY MR. HOFMANN:

15 Q. Doctor, I -- I want to show you what
16 we've marked as Exhibit 5, and this is a
17 inpatient record for Mr. Hicks for his inpatient
18 stay of October 25, 2010, to November 5, 2010,
19 at Riverview Medical Center.

20 That inpatient stay was for --
21 primarily for an unrelated condition; is that
22 correct?

23 A. Yes. In my understanding, he had
24 pericarditis or inflammation around the heart.

25 Q. When Mr. Hicks was in that hospital,



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1 did he also have a -- an evaluation by an
2 orthopedist of his right shoulder?

3 A. I believe he did.

4 Q. Okay. For convenience, I've put a
5 little yellow tab. If you could just take a
6 look at that -- that record and...

7 A. Orthopedic consult.

8 Q. All right. And -- and by whom was
9 the orthopedic consultation?

10 A. Steven P. Friedel.

11 Q. And could you review the -- the --
12 Dr. Friedel's chart note and explain what --
13 what it reveals?

14 A. I mean, I guess during that
15 hospitalization he had right shoulder pain, and
16 Dr. Friedel is an orthopedic surgeon and
17 basically examined that right shoulder with
18 physical examination and came up with an
19 impression and a plan.

20 Q. And what was the impression?

21 A. The impression was persistent right
22 shoulder pain, and the plan was to obtain an MRI
23 scan of his shoulder.

24 Q. Now, this was what date?

25 A. 10/28/2010.



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1 Q. Okay. Now, this is -- is
2 Dr. Friedel's recommendations similar to what
3 yours were when you saw Mr. Hicks in August of
4 2010?

5 A. Yes.

6 Q. Dr. Friedel, do you know if he is
7 Dr. Lisser's partner?

8 A. He is.

9 Q. Thank you, Doctor.

10 MR. HOFMANN: At this time, I have no
11 further questions.

12 MR. FORDE: Off the record.

13 THE VIDEOGRAPHER: Off the record.
14 The time is 6:20.

15 (Break in the video proceedings.)

16 THE VIDEOGRAPHER: Back on the
17 record. The time is 6:21.

18

19 EXAMINATION BY MR. FORDE:

20 Q. Good evening, Doctor. My name is
21 Jim Forde. I'm from the law firm of Hill, Betts
22 & Nash and I -- we represent Van Line Bunkering
23 in the case of Hicks versus Van Line Bunkering.

24 I'm going to be asking you a couple
25 of follow-up questions with respect to what you



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1 just testified to Mr. Hofmann.

2 A. Okay.

3 Q. You -- recurrent tear, you indicated
4 that a recurrent tear can often happen in the
5 early -- usually happens in the early -- early
6 on during physical therapy; is that correct?

7 A. That's usually when we see most
8 recurrent tears from rotator cuff --
9 arthroscopic rotator cuff repairs, yes.

10 Q. Can recurrent tears occur if the
11 individual overexerts himself outside of
12 physical therapy?

13 A. I mean, that -- I mean, usually, pain
14 is a guide during that early postoperative
15 phase. So patients really can't do that. It's
16 really when the therapist are manipulating their
17 arm for range of motion that we see a lot of
18 these things occur.

19 Q. But if you -- is it possible that a
20 recurrent tear can happen because of a
21 subsequent trauma of some sort?

22 A. Oh, yes, absolutely. Sure.

23 Q. And if assuming -- if assuming
24 Mr. Hicks had been doing overhead work or
25 lifting his child over his -- his grandchild



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1 over his head, could that possibly cause a
2 recurrent tear?

3 A. It can.

4 Q. And if -- does the chances of -- of
5 having a recurrent tear outside of physical
6 therapy increase if the patient stops going to
7 physical therapy?

8 A. No. By stopping physical therapy
9 won't cause a recurrent tear. What the
10 complication that we would see would be
11 additional scar tissue and loss of motion.

12 Q. Okay. And did -- did you find
13 whether Mr. Brown had a loss of --

14 MR. HOFMANN: Hicks.

15 MR. FORDE: Sorry. Mr. Hicks. Wrong
16 case.

17 BY MR. FORDE:

18 Q. -- Mr. Hicks had a restricted range
19 of motion?

20 A. He did. When I saw him, he had
21 restricted range of motion.

22 Q. So that could also be as result of
23 not going to physical therapy?

24 A. It could be. Usually, it's
25 restricted from scar tissue formation. So even



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1 in the best physical therapy, patients can get
2 scar formation that limits their range of
3 motion.

4 Q. And you indicated earlier that you
5 know Dr. Lisser; is that correct?

6 A. I do.

7 Q. And do you find him to be a competent
8 orthopedic surgeon?

9 A. Absolutely.

10 Q. And --

11 MR. FORDE: Can we mark this as the
12 next exhibit?

13 COURT REPORTER: Sure.

14 (Discussion off the record.)

15 (Whereupon, reporter received and
16 marked a 3-Page Document as Exhibit 10 for
17 identification.)

18 BY MR. FORDE:

19 Q. I'm going to show you what has been
20 previously marked as Dr. Rizzo -- Rizzo-10. I
21 want to ask if you've seen this document before.

22 A. I believe this is part of
23 Dr. Lisser's records, yes. I have them in the
24 chart.

25 Q. And do you recall reviewing his



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1 recommendations in the back there?

2 A. His last recommendation where it says
3 "plan, based on the materials I have referenced,
4 I" -- "no additional treatment for the right
5 shoulder injury is recommended. Based upon
6 these materials, it is my opinion that the
7 patient should have adequate function of his
8 right shoulder to perform work activities as
9 described in his job description and active at
10 his full work duty."

11 Q. And do you agree with that opinion?

12 A. No.

13 Q. Okay. Now, with respect to -- I am
14 sorry. Where is 10?

15 Now, within this report of Dr. Lisser
16 he indicated that he had reviewed with Mr. Hicks
17 that physical therapy visits had been
18 authorized, contrary to his statements.

19 Did you -- were you aware that
20 Mr. Hicks was consistently missing his physical
21 therapy sessions?

22 MR. HOFMANN: Objection.

23 THE WITNESS: No. I wasn't aware of
24 it, it was a routine occurrence, no.

25 BY MR. FORDE:



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1 Q. Okay. If -- and if Mr. Brown --
2 excuse me. If Mr. Hicks was consistently
3 missing -- assuming that Mr. Hicks was
4 consistently missing his physical therapy
5 sessions, you indicated -- well, he would have
6 restricted motion of his right shoulder; is that
7 correct?

8 A. I'm not aware that he missed the bulk
9 of his physical therapy. If he missed an
10 occasional session, I don't think overall it
11 would have a major effect. But if a patient
12 didn't have any physical therapy for their
13 shoulder, it would be a high likelihood that
14 they would have scar tissue formation and
15 restricted motion.

16 MR. FORDE: Thank you. I
17 have nothing further.

18 THE WITNESS: You're welcome.

19
20 EXAMINATION BY MR. HOFMANN:

21 Q. Doctor, just very quick follow up.
22 You indicated that you disagreed with
23 Dr. Lisser's recommendation that Mr. -- or
24 opinion that Mr. Hicks, as of June 8, 2010, had
25 adequate function with his right shoulder to



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1 perform his work activities in his described job
2 description; is that correct?

3 A. That's what the report says, yes.

4 Q. Yeah. But you disagree with that?

5 A. I -- based on the second MRI and that
6 he had a recurrent rotator cuff tear, my opinion
7 would be that he would have difficulty doing
8 that type of job that he was doing before, heavy
9 lifting, climbing.

10 Q. Such as climbing ladders?

11 A. Yes.

12 Q. Climbing up barges?

13 A. Correct.

14 Q. Lifting -- assuming lifting a
15 200-pound doughnut on a bar, even with
16 assistance of another person?

17 A. Sure.

18 MR. FORDE: Objection.

19 MR. HOFMANN: Thank you, Doctor.

20 Nothing further.

21 THE WITNESS: You are welcome.

22 MR. FORDE: We can't help ourselves.

23 I got nothing further.

24 THE VIDEOGRAPHER: This concludes

25 today's videotaped deposition of Charles Rizzo,



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1 M.D., going off the record. The time is 6:30.

2 (Whereupon, the videotaped deposition
3 of CHARLES RIZZO, M.D. concluded at 6:31 p.m.)
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C E R T I F I C A T E

I, LISA ANNA RINALDI, RPR, and a Certified Court Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination, the witness was duly sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither of counsel nor attorney for any party in this action, and that I am not interested in the event nor outcome of this litigation.

LISA

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